

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 21, 2002

To: The Commission
(Meeting of June 27, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 468 (Firebaugh)** – State property: access: telecommunications

As Amended June 20, 2002

Recommendation: Oppose.

Summary: This bill requires the lease of state-owned property to wireless service providers for location of their facilities, and requires that 20% of the revenues from these leases be put into the California Teleconnect Fund to be used for Digital Divide projects.

Analysis: This bill would require the Department of General Services to compile a database of state-owned real property that may be available for lease to providers of wireless telecommunications services, and would authorize the Director of the Department of General Services to enter into an agreement for lease of certain state-owned property to any provider of wireless telecommunications services for location of its facilities. The bill would provide that a wireless telecommunications facilities located on state-owned real property pursuant to a lease that meets these requirements, or agreements negotiated by the Director of Transportation for the placement of wireless telecommunications facilities on land or facilities owned or controlled by the Department of Transportation, would not be subject to the requirements of any local zoning ordinance or regulation. The bill would provide that 20% of the revenues from fees collected pursuant to these provisions be available, upon appropriation by the legislature, to finance Digital Divide projects, which would be managed by the Governor's Director for E-Government. The bill provides for the administration of these revenues by the CPUC through placement in the California Teleconnect Fund (CTF), and requires specific use of the funds for pilot projects in specified geographic areas.

The Telco Division opposes this plan and instead recommends that the revenues be administered by the entity ultimately assigned to implement Digital Divide projects. Although the CTF is similarly aimed at narrowing the Digital Divide, it would be unnecessarily cumbersome and time consuming to have the CTF as the intermediary administrator when this step could be eliminated. Moreover, the bill mandates that "revenues shall be maintained in a separate fund account to be used only for Digital Divide pilot projects." The CTF is not exclusive in this regard.

Lastly, the State Board of Equalization may be interested in reviewing this bill to see if it conflicts with any of its requirements. Wireless facilities located on state-owned real properties leased under this bill would be exempt from local zoning ordinances or regulations. Although AB 468 encourages local government agencies to develop similar databases of local agency real properties, it does not require them to exempt wireless providers from local zoning ordinances or regulations with respect to them. Therefore, a disparity may result between local agency owned property, which is obviously subject to such regulation, and a state owned property which is not. In cases in which a wireless carrier has placed facilities on two different buildings and only one was subject to local zoning and regulation, it would have to determine how to allocate the local costs for everything from customer bills to state and federal taxes.

Legislative History: N/A

Fiscal Impact: If the CPUC is required to administer these revenues through the CTF, additional costs will be incurred by the CPUC to cover the increased workload.

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Date: June 21, 2002

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Attachment

BILL LANGUAGE:

BILL NUMBER: AB 468 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 20, 2002
AMENDED IN SENATE JUNE 6, 2002
AMENDED IN SENATE APRIL 10, 2002
AMENDED IN ASSEMBLY APRIL 16, 2001
AMENDED IN ASSEMBLY MARCH 26, 2001

INTRODUCED BY Assembly Member Firebaugh

FEBRUARY 21, 2001

An act to amend Section 14666.6 of, and to add Section 14666.8 to, the Government Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 468, as amended, Firebaugh. State property: access: telecommunications.

(1) Existing law requires the Director of General Services, with the approval of the state agency concerned, and the Director of Transportation to negotiate in the name of the state, access to state-owned property, including rights-of-way, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the director to be in the interest of the state. Existing law provides that this requirement to negotiate access applies to telecommunications and information technologies.

This bill would require the Director of General Services to compile and maintain an inventory of state-owned real property that may be available for lease to providers of wireless telecommunications services for location of wireless facilities. It would authorize the director to enter into an agreement for the lease of certain state-owned real property to any provider of wireless telecommunications services for location of its facilities, and would require that this lease, among other things, (1) provide for the use of the wireless provider's facilities located on the state-owned real property by any appropriate state agency if technically, legally, aesthetically, and economically feasible, and (2) facilitate, to the greatest extent possible, agreements among

providers of wireless telecommunications services
~~for relocation~~ *for colocation* of their facilities
 on state-owned real property.

This bill would provide that a wireless telecommunications facility located on state-owned real property pursuant to a lease that meets these requirements, or agreements negotiated by the Director of Transportation for the placement of wireless telecommunications facilities on land or facilities owned or controlled by the Department of Transportation, would not be subject to the requirements of any local zoning ordinance or regulation.

The bill would require that ~~10%~~ 20% of the revenues from fees collected pursuant to these provisions, except for revenues from fees from a lease agreement for access to Department of Transportation property or a lease agreement existing prior to January 1, 2003, be available, upon appropriation by the Legislature, *to be administered by the Public Utilities Commission* to finance Digital Divide projects.

~~—This bill would require the Governor's director of e-government, in consultation with representatives from community technology programs, as defined, advocacy groups, and community based organizations, to develop, within 180 days of the effective date of the bill, criteria for selecting Digital Divide projects to be funded pursuant to the bill.~~

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Wireless telecommunications service is a critical part of California's infrastructure.

(b) The rapid deployment of wireless telecommunications facilities is critical to ensure network access and quality of service.

(c) It is in the public interest to minimize the aesthetic impact of wireless telecommunications towers and facilities necessary to support wireless networks.

(d) Use of property owned by the state, local government agencies, and other public entities for location of wireless telecommunications facilities will expedite deployment of wireless telecommunications service and minimize the aesthetic impact of

wireless telecommunications towers and facilities.

(e) A certain percentage of people have the best information technology that our society has to offer. These people have the most powerful computers, the best telephone and fastest Internet services, as well as a wealth of content and training relevant to their lives. There is another group of people that have very little technology or service, if any at all. The difference between these two groups is what has been called the "Digital Divide."

(f) "Falling Through the Net: Toward Digital Divide Inclusion," a report published by the United States Department of Commerce, determined that although more than one-half of all households have computers and more than one-half of all Americans were expected to be using the Internet by the middle of 2001, a Digital Divide remains or has expanded slightly in some cases.

(g) Today, a large number of Americans are using the Internet to conduct daily activities, including, but not limited to, communication, shopping, entertainment, job searches, job training, and educational enhancement. To be on the less fortunate side of the Digital Divide means that individuals are not able to participate in the world's new information-based economy. Even worse is that with the growth of the information-based economy, people who lack access to those tools are becoming disadvantaged.

(h) Even with access to computers and the Internet, a divide is emerging with relevant content and information available on the Internet, as reported in The Children's Partnership's "Online Content for Low-Income and Underserved Americans: The Digital Divide's New Frontier." This report audited the content available on the Internet and found that little content could be found that addresses the interests and needs of local information users, including needs of adults with limited literacy, that is provided in a culturally relevant manner, or that is available in a variety of languages.

(i) Raising the level of digital access by increasing the number of Californians using the technology tools of the digital age is a high priority in the State of California.

(j) Community technology programs serve Californians who do and do not have computers and the Internet at home by providing open access to, and opportunities for, training in technology.

(k) Community technology programs that are trusted and familiar places in neighborhoods are capable of attracting people who would not otherwise have the opportunity to learn about and use technology.

(l) According to the United States Department of Labor, Bureau of Labor Statistics, employment in multimedia occupations is projected to grow the fastest and increase more, by 5.3 million workers, than any other major group over the 1998-2008 period.

(m) Community technology programs prepare Californians for the digital age and the ensuing economic opportunities that fuel California's economy and make it the leader in technology.

SEC. 2. Section 14666.6 of the Government Code is amended to read:

14666.6. (a) With the approval of the state agency concerned, the director shall negotiate in the name of the state, access to state-owned property, not used for highway purposes, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the director to be in the best interest of the state. To the extent permitted under existing law, the director shall determine the amount of consideration for, and means of access, which means shall include, but not be limited to, any of the following: lease, permit, or other form of providing a monetary or service consideration for the access.

(b) The Director of Transportation shall negotiate in the name of the state, access to state-owned highway rights-of-way, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the Director of Transportation to be in the best interest of the state. To the extent permitted under existing law, the Director of Transportation shall determine the amount of consideration for, and means of access, which means shall include, but not be limited to, any of the following: lease, permit, or other form of providing a *fair market value* monetary or service consideration for the access.

(c) This section applies to various telecommunications and information technologies, including, but not limited to, voice, data, video, and fiber-optic technologies.

(d) Any payments received under this section for a grant or conveyance through land or facilities controlled by the Department of Transportation, including but not limited to, rights-of-way along the state highway system, shall be deposited in the State Transportation Fund.

(e) Agreements negotiated by the Director of Transportation for the placement of wireless telecommunications facilities on land or facilities owned or controlled by the Department of Transportation shall not be subject to the requirements of any local zoning ordinance or regulation. *The director shall provide reasonable notice and opportunity for comment on that placement by the city or county in which the state-owned land or facilities are located.*

SEC. 3. Section 14666.8 is added to the Government Code, to read:

14666.8. (a) The director shall, within 120 days of the effective date of this section, compile and maintain an inventory of

~~state-owned real property that may be available for lease to providers of wireless telecommunications services for location of wireless telecommunications facilities. This inventory shall be the state's sole inventory of state-owned real property available for this purpose.~~

~~—(b) The director shall make the inventory available on the department's Web site.~~

~~—(c) On behalf of the state, the director may negotiate and enter into an agreement to lease state-owned real property, not subject to an existing state franchise, to any provider of wireless telecommunications services for location of its facilities. A lease for this purpose shall do all of the following:~~

~~—(1) Provide for a reasonable rental fee to be paid to the state to the extent permitted under existing law.~~

~~—(2) Designate a lease term that is acceptable to the director.~~

of state-owned real property that it manages that may be available for lease to providers of wireless telecommunications services for location of wireless telecommunications facilities. This inventory shall be the state's sole inventory of department-managed, state-owned real property available for this purpose. At the director's discretion, the director may charge an application or access fee for use of the inventory to pay the costs associated with compilation and maintenance of the inventory.

(b) The director shall make the inventory available on the department's Web site, which may be subject to an access fee or subscription as determined by the director to pay the costs associated with the compilation and maintenance of the inventory.

(c) On behalf of the state, the director may negotiate and enter into an agreement to lease department-managed, state-owned real property to any provider of wireless telecommunications services for location of its facilities. A lease for this purpose shall do all of the following:

(1) Provide for a fair market value rental fee to be paid to the state to the extent permitted under existing law.

(2) Designate a lease term that is acceptable to the director. The duration of the initial lease term for any such facility shall not exceed 10 years, and may provide for a negotiated number of renewal terms that do not exceed five years each.

(3) Provide for the use of the wireless provider's facilities located on the state-owned real property by any appropriate state agency if technically, legally, aesthetically, and economically feasible.

(4) Facilitate, to the greatest extent possible, agreements among providers of wireless telecommunications services for collocation of their facilities on state-owned real property.

(d) A wireless telecommunications facility located on state-owned real property pursuant to a lease that meets the requirements of subdivision (c) shall not be subject to the requirements of any local zoning ordinance or regulation. *The director shall provide reasonable notice and opportunity for comment on that placement by the city or county in which the state-owned land or facilities are located.*

(e) The director shall develop and distribute materials for use by local government agencies that encourage these agencies to compile and maintain inventories of local agency owned real property that may be available to providers of wireless telecommunications services for the location of wireless telecommunications facilities.

(f) (1) Of the revenues from fees collected pursuant to this section after January 1, 2003, except for revenues from fees from a lease agreement for access to Department of Transportation property or a lease agreement existing prior to January 1, 2003, ~~40~~

20 percent shall be available, upon appropriation by the Legislature, for the purpose of addressing the state's Digital Divide. These revenues shall be maintained in a separate fund account to be used only for Digital Divide pilot projects.

~~—(2) The Governor's director for e-government, in consultation with representatives from community technology programs, advocacy groups, and community-based organizations, shall develop, within 180 days after the effective date of this section, criteria for selecting Digital Divide projects for funding pursuant to this subdivision. In developing the criteria, the director shall consider the income level, racial composition, need, and geographic location of the community in which the project serves and other relevant criteria.~~

(2) The Public Utilities Commission shall administer these funds in conjunction with its California Teleconnect Fund.

(3) The first four pilot projects selected for funding based on these criteria, upon appropriation by the Legislature, shall include one statewide program currently engaged in technology diffusion with centers located in both rural and urban communities and one for a city in each of the following: Orange County, southeast Los Angeles, and a northern California bay area county. The Governor's annual budget proposal shall include funding for these ~~three~~ four projects and all future Digital Divide projects.

(4) "Community technology programs" means a community-based, nonprofit organization that is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code and engaged in diffusing technology in local communities and training local communities in the

use of technology, especially local communities that otherwise would have no access or limited access to the Internet and other technologies.

(5) "Digital Divide projects" means community technology programs involved in activities that include, but are not limited to, the following:

(A) Providing open access to and opportunities for training in technology.

(B) Developing content relevant to the interests and wants of the local community.

(C) Preparing youth for opportunities in the new economy through multimedia training and skills.

(D) Harnessing technology for e-government services.

(g) Nothing in this section shall be construed to alter any existing rights of telephone corporations under Section 7901 of the Public Utilities Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make state-owned real property available for lease at the earliest possible time, it is necessary for this act to go into immediate effect.